IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE NO. 63 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
M/S. COMET DYESTUFF PVT.LTD. - Opponent(s)

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Appearance :
MRS. MONA BHATT for MR. MANISH R. BHATT for Applicant(s).
None for Opponent(s) though served .

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/08/2006

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad

Bench “C”, at the instance of the Revenue, has referred the following questions for the opinion of this Court arising out of I.T.A. No.4319/Ahd/1989 relating to Assessment Year 1986-87:

> *“1) Whether the Appellate Tribunal is right in law and on facts in directing the A.O. to allow carry forward of business loss on a belated return?*
>
> *2) Whether the Appellate Tribunal is right in law and on facts in relying on the presumption on the party of the part of the assessee to the effect that it may have been allowed extension of time sought for filing of the return, by the A.O.?”*

2. The Assessee, a business concern, was required to file the return of income under Section-139(1) latest by 30th June, 1986; on an application made to the Assessing Officer for extension of time, time to file the return was extended upto 31st August, 1986 and thereafter, on 30th September, 1986, the Assessee filed the return declaring the business loss of Rs.2,08,209=00. The Assessing Officer computed the loss of Rs.1,50,150/-, as

the return was not filed on or before 31st August, 1986, the carry forward of loss was not allowed. In the appeal, it was submitted by the Assessee that he had made second application on 29th August, 1986 seeking extension of time upto 31st October, 1986 and as the Assessing Officer did not communicate his order on this application, the Assessee could not be penalised. The Tribunal held in favour of the Assessee, therefore, the Revenue asked for the Reference.

3. In the matter of ***Mehsana Ice And Cold Storage P. Ltd. Vs. Commissioner of Income-Tax,*** [***2005 (2) 75 I.T.R. 601***], the Division Bench of this Court has observed that the Tribunal would not be justified in denying the benefit of carry forward of business loss simply on the ground that there was no extension of time for filing the return, on the second application. The Court observed that if such an application is filed but not decided, then, the Assessee would be entitled to presume that such an application has been decided in his favour.

4. In view of the identical facts, we hold that the Tribunal was absolutely right and justified in deciding the matter in favour of the Assessee. The

Reference is answered against the interest of the Revenue. The Reference stands disposed of accordingly. No costs.

[R.S.Garg, J.]

[M. R. Shah, J.]

*kamlesh**